



# Division of Elementary and Secondary Education

*Transforming Arkansas to lead the nation in student-focused education*

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April 15, 2022

Via Email

Rebecca Miller-Rice  
Rules Administrator  
Bureau of Legislative Research  
[miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov)

**Re: Proposed Rules Amendments (for Subcommittee Review): Division of  
Elementary and Secondary Education Rules Governing the Right to Read Act**

Dear Ms. Miller-Rice:

Attached are proposed amendments to the DESE Rules Governing the Right to Read Act. This filing also contains a markup version of the rules, post-public comment summary, Financial Impact Statement, and public comments/Division responses. The Division respectfully requests that these proposed rules amendments be placed on the ALC Administrative Rules Subcommittee agenda.

On December 29, 2021, the State Board of Education approved these rules amendments for public comment release, with the Governor's Office approving them on February 10, 2022. Following public comment, non-substantive changes were made, which are highlighted on the markup version. On April 14, 2022, the State Board gave its final approval to these rules amendments.

If you have any questions or require further information, please do not hesitate to call me at (501) 682-0960.

Respectfully submitted,

/s/ Cristy Park  
Attorney Specialist  
Arkansas Department of Education

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

\_\_\_\_\_

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

\_\_\_\_\_

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. \_\_\_\_\_

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). \_\_\_\_\_

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE**

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes      No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

### **Summary of Proposed Changes to Rules Governing the Right to Read Act**

The proposed amendments incorporate the provisions of Act 606 of 2021. In summary, Act 606 added language prohibiting the use of certain reading instruction methods by public school districts for students in grades kindergarten through second grade, allowing the State Board to order DESE to withhold up to 10% of the monthly distribution of state foundation funding aid if the district does not comply within 60 days of the State Board providing notice of a violation until the district is in compliance.

Additionally, Act 606 of 2021 requires the Secretary of Education to hire and supervise an Education Ombudsman to assist with the enforcement of the Right to Read Act. It provides minimum qualifications, authority of the Ombudsman, and required reporting to the state board and legislature.

### **Post Public Comment Summary**

Following public comment, only non-substantive clarifying, and technical changes were made.

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES  
GOVERNING THE RIGHT TO READ ACT  
Effective Date: ~~March 6, 2020~~\_\_\_\_\_**

**1.00 REGULATORY AUTHORITY**

- 1.01 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-17-402, 6-17-429, and 25-15-201 et seq.

**2.00 DEFINITIONS**

- 2.01 "Division" means the Division of Elementary and Secondary Education of the Arkansas Department of Education.
- 2.02 "Prescribed pathway" means approved professional development that meets the criteria established by the Division.
- 2.03 "Public school district" includes traditional public schools, open-enrollment charter schools, and district conversion charter schools.
- 2.04 "Science of reading" is the study of the relationship between cognitive science and educational outcomes, also referred to as scientific reading instruction.
- 2.05 "Structured literacy" is the approach by which licensed personnel teach reading in an explicit, systematic, cumulative, and diagnostic manner.

**3.00 REQUIRED PROFESSIONAL DEVELOPMENT IN SCIENTIFIC READING INSTRUCTION**

- 3.01 By the beginning of the 2019-2020 school year, a public school district, including an open-enrollment public charter school, shall establish the professional development program as required by Section 3.03 and the program shall be provided on an annual basis after the professional development in Section 4.02 is complete.
- 3.02 Beginning with the 2018-2019 school year, A a public school district, including an open-enrollment public charter school, shall provide the following professional development in scientific reading instruction:
- 3.02.1 For teachers licensed at the elementary level in kindergarten through grade six (K-6) teaching math, science, social studies, or English language arts, teachers with a special education license in kindergarten through grade twelve (K-12), and teachers licensed as reading specialists in kindergarten through grade twelve (K-12), professional development for one (1) of the

prescribed pathways to obtaining a proficiency credential in knowledge and practices in scientific reading instruction; and

3.02.2 For teachers licensed at a level other than those listed in Section 3.02.1, professional development for one (1) of the prescribed pathways to obtaining an awareness credential in knowledge and practices in scientific reading instruction.

3.03 By the beginning of the 2019-2020 school year, a ~~A~~ public school district, including an open enrollment public charter school, shall include a literacy plan in the annual school-level improvement plan that shall include without limitation a curriculum program and a professional development program that is:

3.03.1 Aligned with the literacy needs of the district; and

3.03.2 Based on the science of reading.

#### **4.00 PROFICIENCY AND AWARENESS FOR EMPLOYMENT**

4.01 By the beginning of the ~~2021-2022~~ 2023-2024 school year:

4.01.1 All teachers employed in any of the following teaching positions shall demonstrate proficiency in knowledge and practices of scientific reading instruction:

4.01.1.1 Elementary school teachers in grades kindergarten through six (K-6); teaching math, science, social studies, or English language arts;

4.01.1.2 K-12 Special education teachers;

4.01.1.3 Teachers of English Language Learners ~~teachers~~ in grades kindergarten through six (K-6); and

4.01.1.4 Reading specialists.

4.01.2 A teacher described in Section 4.01.1 who has not demonstrated proficiency by the 2023-2024 school year may be afforded an opportunity to demonstrate proficiency by being placed in intensive support status for a period of time specified by the teacher's evaluator in the professional growth plan for the teacher.

4.01.3 All other educators shall demonstrate awareness in knowledge and practices of scientific reading instruction.



- 4.02 All teachers who begin employment in the ~~2021-2022~~ 2023-2024 school year, and each following school year ~~thereafter~~, shall demonstrate proficiency or awareness in knowledge and practices in scientific reading instruction as is applicable to their teaching position by completing the prescribed proficiency or awareness in knowledge and practices of the scientific reading instruction credential either:

4.02.1 As a condition of licensure; or

4.02.2 Within one (1) year if the teacher is:

4.02.2.1 Already licensed; or

4.02.2.2 Employed under a waiver from licensure.

- 4.03 ~~Beginning in the 2021-2022 school year, each public school district must designate each teacher as having demonstrated proficiency or awareness in eFinance.~~ Beginning in the 2023-2024 school year, each public school district, including open-enrollment public charter schools, must document that each teacher has demonstrated either proficiency or awareness in compliance with Section 4.00 of these Rules as part of professional development reporting requirements in eFinance.

4.03.1 Each public school district, including an open-enrollment public charter school, must include the information required by Section 4.03 as part of the Cycle 2 submission to the Division.

- 4.04 Any educator whose license expires on December 31, 2024~~3~~, or after, must have an awareness credential to renew his or her license.

4.04.1 If the educator does not have the required credential, the educator's license will not be renewed.

- 4.05 Teachers employed under a waiver or exception from licensure requirements are subject to the requirements of these Rules.

- 4.06 Professional development and determination measures to meet the proficiency or awareness requirement must be approved by the Division as a prescribed pathway, as set forth in Sections 5.00 and 6.00 below.

## **5.00 PRESCRIBED PATHWAYS FOR PROFICIENCY**

- 5.01 All teachers employed in any of the teaching positions in Section 4.01.1 of these Rules shall demonstrate proficiency in knowledge and practices of scientific reading instruction.

- 5.02 To demonstrate proficiency in knowledge and practices of scientific reading instruction, teachers must complete a prescribed pathway for proficiency.

5.02.1 Each pathway for proficiency shall have two phases:

5.02.1 Phase I outlines professional learning that meets the knowledge and practices in scientific reading instruction approved by the Division.

5.02.2 Phase II provides for the demonstration of knowledge and practices in scientific reading instruction.

5.02.2.1 To complete Phase II for proficiency, an educator may pass a stand-alone reading assessment approved by the State Board of Education, be ~~evaluated~~ deemed proficient by a Certified Assessor, or met one of the other approved pathways.

- 5.03 For purposes of Section 5.02.2.1, a Certified Assessor is a licensed educator that has completed ~~a the appropriate~~ Division-approved Science of Reading training, and who, in the normal scope of his or her duties, is tasked with observing teachers and required to conduct evaluations of personnel.

- 5.04 If a school district wishes to use a pathway other than a pathway already approved by the Division, the district may submit a request for the Division to review a specific Independent Professional Development (IPD) provider.

5.04.1 A request under Section 5.04 must be made by a district using the IPD Review Form on the Division website.

5.04.1.1 The district is responsible for submitting all necessary materials for consideration.

5.04.1.2 The request must be made by the district and requests directly from a vendor will not be accepted.

5.04.2 A review under Section 5.04 is a review of the training program provided to teachers and is not a review of the curriculum program.

5.04.3 If an IPD training program is approved, it will be added to the list of approved prescribed pathways for proficiency on the Division website.

## **6.00 PRESCRIBED PATHWAYS FOR AWARENESS**

- 6.01 All teachers ~~that~~ who are not required to obtain a proficiency credential under Section 5.00, shall demonstrate an awareness in the knowledge and practices in scientific reading instruction by completing one of the prescribed pathways for awareness.
- 6.02 All approved prescribed pathways for awareness shall be listed on the Division website.

## **7.00 PROGRAM EVALUATION AND APPROVAL**

- 7.01 By the beginning of the 2020-2021 school year, the Division shall identify an approved list of materials, resources, and curriculum programs for public school districts that are supported by the science of reading and based on instruction that is explicit, systematic, cumulative, and diagnostic, including without limitation:
  - 7.01.2 Evidence-based reading intervention programs; and
  - 7.01.3 Evidence-based reading programs that are grounded in the science of reading; and
  - 7.01.1 Dyslexia programs that are evidence-based and:
    - 7.01.1.1 Aligned to structured literacy; or
    - 7.01.1.2 Grounded in Orton-Gillingham methodology.
- 7.02 The approved list of materials, resources, and curriculum programs is established by a committee of educators or experts who have demonstrated proficiency in the knowledge and practices of scientific reading instruction.
- 7.03 The Division shall provide a submission window for public school districts to submit literacy programs for review.
- 7.04 The Division shall provide a submission window for independent vendors to submit literacy programs for review.
- 7.05 The Division shall publish a list of approved programs on the Division's website.
- 7.06 Beginning in the 2021-2022 school year, any public school district, including an open-enrollment public charter school, that purchases a curriculum program shall choose a curriculum program from the Division's approved list of curriculum programs.
  - 7.06.1 A public school district that chooses to purchase a curriculum program that is not from the Division's approved list of curriculum programs shall submit the following information to the Division for approval:

- 7.06.1.1 The rationale for choosing the alternative curriculum program;
- 7.06.1.2 Evidence-based research regarding the alternative curriculum program; and
- 7.06.1.3 A signed letter from the Superintendent and School Board President requesting approval of the alternative curriculum program.

7.06.2 A public school district receiving Level 3--coordinated support, Level 4--directed support, or Level 5--intensive support for reading, may only select an approved curriculum program from the list published pursuant to Section 7.06; and may not choose an alternative curriculum program under Section 7.06.1.

7.06.3 The Division shall publish the timeline for submission of requests for approval under Section 7.06.1 by Commissioner's Memo.

## **8.00 EDUCATOR PREPARATION PROGRAMS**

8.01 No later than May 2023, the following shall have proficient knowledge and skills to teach reading consistent with the best practices of scientific reading instruction:

8.01.1 A person who completes a state-approved educator preparation program leading to Elementary (K-6) or Special Education (K-12) licensure; and

8.01.2 A person seeking Elementary (K-6) or Special Education (K-12) licensure by reciprocity or by adding an endorsement.

8.02 No later than May 2023, a person who completes a state-approved educator preparation program leading to licensure in an area other than those listed in Section 8.01 shall demonstrate an awareness of the best practices of scientific reading instruction.

8.03 A provider of a state-approved educator preparation program, graduate program, or alternative preparation program shall include in its annual report to the Division a description of the provider's program to prepare educators to teach reading using scientific reading instruction.

## **9.00 VIOLATIONS OF THE RIGHT TO READ ACT**

9.01 A public school district, including an open-enrollment public charter school, that violates the Right to Read Act, codified in Ark. Code Ann. § 6-17-429, or these Rules, or both, shall be in violation of the Standards for Accreditation of Arkansas Public Schools and School Districts and may be placed in probationary status by the Division.

9.01.1 Compliance with these Rules shall be monitored by desk monitoring, on-site monitoring, and monitoring of eFinance.

9.02 A public school district, including an open-enrollment public charter school, placed in probationary status under Section 9.01 shall send written notification to the parents of the students in the public school district of the reason for being placed in probationary status.

9.03 A provider of a state-approved educator preparation program, graduate program, or alternative preparation program that does not comply with the requirements of the Right to Read Act, codified in Ark. Code Ann. § 6-17-429, or these Rules, or both, may be subject to penalties up to and including having the provider's approval status revoked.

9.04 A public school district, including an open-enrollment public charter school, shall not use the program of instruction for students in kindergarten through grade two (K-2) that is based in any practice or intervention program that utilizes the three-cueing system model of reading, visual memory as the primary basis for teaching word recognition, or the three-cueing system model of reading based on meaning, structure and syntax, and visual, also known as MSV.

9.05 Beginning with the 2023-2024 school year, if the state board determines that a public school district, including an open-enrollment public charter school, has violated Section 9.04 of these rules, the state board shall notify the public school district of its violation.

9.05.1 If a public school district, including an open-enrollment public charter school, fails to remedy its violation under Section 9.04 of these rules within sixty (60) days of notification of its failure to comply, the state board shall direct the Division to withhold a maximum of ten percent (10%) of the monthly distribution of state foundation funding aid to the public school district as provided under Ark. Code Ann. § 6-20-2305(a)(1)(B).

9.05.2 Once the state board determines that a public school has complied with Section 9.04 of the rules, the Division shall restore the monthly distribution of state foundation funding aid to the public school district to its original amount before the reduction was made under Section 9.05.01 of these rules.

## **10.00 EDUCATION OMBUDSMAN**

**10.01** The Secretary of the Division shall hire an Education Ombudsman to assist the Division in the enforcement of these rules, including without limitation enforcing the requirements for demonstrating proficiency, providing professional development, and using a permitted program of instruction.

**10.01.1** The Secretary of the Division may designate additional requirements related to public education, including without limitation the enforcement of literacy requirements.

**10.01.2** The Secretary of the Division shall supervise the Education Ombudsman and shall not delegate supervision to an employee of the Division.

**10.01.3** The minimum qualifications for the Education Ombudsman shall include a master's degree in education or a related field. An individual who served as a past public school district superintendent or serves as a current public school district superintendent is not eligible to serve as the Education Ombudsman under this Section.

**10.01.4** The Education Ombudsman may communicate with a public school student, with permission from a parent, legal guardian, or person standing in loco parentis of the public school student, a parent, legal guardian, or person standing in loco parentis of a public school student, and administration, faculty, and staff employed by a public school district, including an open-enrollment public charter school.

**10.01.5** The Education Ombudsman may review an issue or concern related to the education of a public school student enrolled in a public school, including an open-enrollment public charter school.

**10.01.6** The Education Ombudsman may recommend training and resources to a public school, public school district, including an open-enrollment public charter school.

**10.01.7** The Education Ombudsman shall prepare and submit an annual report to the state board concerning the work of the Education Ombudsman and any recommendations related to the focus areas of the Education Ombudsman.

**10.01.7.1** The report required under Section 10.01.07 of these Rules shall be submitted every two (2) years to the

House Committee on Education and the Senate  
Committee on Education.

MARKED UP

## DESE RULES GOVERNING THE RIGHT TO READ ACT

### Public Comments and Responses of the Division of Elementary and Secondary Education

Commenter Name: Joyce Sanders Haver, Van Buren School District (2/22/2022)

Comment (1):

I have been working with a district team of top literacy teachers (K-6) since last year. We have been building capacity and knowledge as well as gathering information from many sources to help us make an informed decision concerning the adoption of a new reading program.

Our team is concerned with the very small number of "approved" core programs on the state approved list.

We are also concerned that of the very small number of "approved" programs, there are very few with "approval" in all core reading components: phonological awareness, phonics, vocabulary, comprehension, and fluency.

There have to be more programs that meet all the components of reading and should be approved. When will an updated list of programs be published?

With districts moving forward with adoptions and purchases, it seems unwise to choose one of the limited number of programs on the approved list, just because it is on the list.

I understand the need to provide support and sanctions to districts with struggling programs which result in very low test scores, but to do a blanket threat to sanction a district for the curriculum they choose to use to educate their students seems to be an extreme action.

Division Response: DESE has add Programs to the list of approved reading programs as they are reviewed and approved. Please check the DESE website for updates to the list. Districts have the autonomy to select core, supplemental, and intervention programs that meet the needs of their educational communities.

A public school district receiving Level 1: General Support or Level 2: Collaborative Support that chooses to purchase a curriculum program that is not from DESE's approved list of curriculum programs has the option to request program approval by submitting the following information to DESE:

- 1) the rational for choosing the alternative curriculum program;
- 2) evidence-based research regarding the alternative curriculum program; and
- 3) a signed letter from the Superintendent and School Board President requesting approval of the alternative curriculum program.

Comments Considered. **No changes made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association (2/22/2022)

Comment (1): 10.00: All of the section numbers below "10.00" are instead "9.0". For consistency, all of the numbers after "9.01" have an extra zero in the second section number, such as "9.01.01".



Division Response: Comments considered. **Non-substantive change made.**

Comment (2): 9.01.04 The “l” is missing in “public” between “open-enrollment” and “charter”.

Division Response: Comments considered. **Non-substantive change made.**

Comment (3): 9.01.06 The “l” is missing in “public” at “public school district”.

Division Response: Comments considered. **Non-substantive change made.**

Comment (4): 9.01.07.01: The citation to “9.01.07” here should be “10.01.7”.

Division Response: Comments considered. **Non-substantive change made.**

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